



Air Conditioning Contractors of America

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DEPARTMENT OF AGRICULTURE
Rural Utilities Service

Comments on 7 CFR Part 1720
(RIN 0572-AB83)

Submitted by the Air Conditioning Contractors of America

February 27, 2004
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On behalf of the approximately 5,000 member companies of the Air Conditioning Contractors of America, we are pleased to submit comments on your proposal to establish procedures for a guarantee program for cooperatives and other not-for-profit lenders that make loans eligible for assistance under the Rural Electrification Act of 1936.

For over 50 years ACCA has represented the technical, educational and policy interests of the men and women who design, install and maintain indoor environmental systems for residential and commercial/industrial applications. The vast majority of our members are small, federal income-tax paying family-owned businesses. Many provide services in rural communities.

In the War Revenue Act of 1898 congress granted rural co-ops an exemption from federal excise taxes to aid them in providing electricity and telephone service to their members. Co-ops were further aided by the Revenue Act of 1916 that exempted them from federal income tax. This helped level the playing field for people in rural communities as major utilities were reluctant to expend their lines to sparsely settled areas of the country. They received a further boost in 1924 when congress allowed them to earn up to 15% of their revenue from non-members.

These incentives helped speed the growth of rural co-ops. Today it is the unusual rural area that does not fall within the scope of a co-op. The concept, however, has been distorted. Fully 40% of RUS loans are now made to co-ops that serve at least in part metropolitan areas. There is even a co-op on the island of Manhattan (NY).

Many cooperatives no longer restrict themselves to electricity and telephone-related services. They engage in a wide variety of business activities, often through subsidiaries. In some co-ops this expansion includes heating, ventilating, air conditioning and refrigeration (HVACR) installation and services. As a result, heavily subsidized co-ops compete head to head with many of our non-subsidized, federal income tax-paying members.

The tax-exempt status gives them an unfair advantage, thanks to our government. Further, the \$5 billion annually in heavily subsidized Rural Utilities Service to electric and telephone borrowers gives them a second and major advantage.

On top of all this, your proposed rule escalates the problem by allowing co-ops to borrow money at below-market rates, at US Treasury rates. Lower rates translate into lower capital costs and these savings are fungible and have been and will continue to be put to use in expanding to other ventures.

Part of the competitive nature of business is one's ability to fund the growth of his or her company. Most small businesses rely upon private sector financing to help speed that growth. And it has worked well. Small business is responsible for over 90% of the job growth in our country today. Yet, the interest small businesses pay for this privilege has to go into their pricing structure. It is part of their overhead. Every penny of interest adds to their costs of doing business.

If the rural electric co-ops are allowed access to \$3 billion or more in below-market rates, and there is no guarantee the loans will not be used to build up related services such as HVACR, our tax-paying members and other small businesses who compete with them will be put at a further competitive disadvantage.

By pledging the full faith and credit of the government to guarantee loans by the National Rural Utilities Cooperative Finance Corp (CFC) and Co-Bank, you develop a line of inexpensive capital for coops to use in diversification and expansion of their business with little or no risk to them as the taxpayer will be responsible for future defaults. There is no protection for the taxpayer while those receiving the loans will have one less incentive to ensure that the money is spent wisely and according to sound business practices.

Adding to the guarantee problem is lack of adequate oversight:

- there will be no federal regulations to govern lending practices,
- no compliance requirements,
- minimal accountability to the government,
- sets a new precedent for a federal guarantee of a private, non-regulated lender's debt.

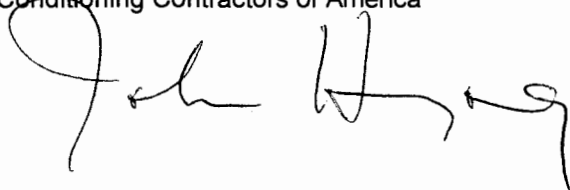
If you compare this procedure with that of the federally guaranteed National Flood Insurance Program you'll quickly spot the disparity in approaches.

Other solutions present themselves but at a minimum you should implement regulations to prevent loss, including setting rigorous standards for the loans (e.g. the requirements of the Federal Institutions Reform, Recovery and Enforcement Act); restrict them to electric and telephone service; require an adequate capitalized trust fund of at least 7%; assure that every dollar of outstanding guarantee is collateralized by investment grade first trust mortgages, and provide federal regulator oversight (Office of Thrift Supervision) to prevent abuse.

Our members are not afraid of the competition from co-ops. They just want it to be on a level playing field. Unfortunately, your proposal further tilts the field in favor of the co-ops.

Thank you for the opportunity to comment.

Air Conditioning Contractors of America

A handwritten signature in black ink, appearing to read "John H. Hing", is written over the typed name "Air Conditioning Contractors of America". The signature is fluid and cursive, with a long horizontal stroke at the end.